

Summary of the July 28, 2009

Final Budget Revisions Affecting the Lanterman Act

The Legislature required \$334 million reduction in the Developmental Disabilities Services budget. This was achieved through a combination of increases (primarily in federal revenue) and decreases in expenditures. These changes generally are effective with the July 28 signing of the budget. Exceptions to that date are noted within.

The Trailer Bill Language (TBL) is found in ABX4 9. The link is:
http://info.sen.ca.gov/pub/09-10/bill/asm/ab_0001-0050/abx4_9_bill_20090728_chaptered.pdf

We have developed Fact Sheets about each of these cuts. These are posted on our webpage www.disabilityrightsca.org and will soon be available in Spanish and Asian languages.

Areas Where the Lanterman Act Did Not Change

- No change to eligibility for Lanterman Act services except for Early Start (see below).
- No change to the IPP/IFSP content or process.
- No change to due process and agreement that the 30 day notice of action provisions applies to any change in services.

Policy Changes Which Promote Integration

- Custom Employment Option (CEO) requires day programs to offer an alternative customized program component to focus on the consumer's individual needs and interests to develop or maintain employment or volunteer activities in lieu of their current program and

provide between 20 to 80 hours of service/support per month for each participant.

- Requirement that IFSP teams consider integrated preschool services with supports by qualified personnel instead of infant development programs. Decisions about whether or not this is appropriate will be made on an individual basis.
- Sierra Vista, one of DDS' small institutions, will close later this year and consumers residing there generally will be placed in the community.
- Some individuals residing at Porterville will either move from behind the fence or to other transition units which qualify for federal match.
- Regional Centers are not able to vendor new community care facilities licensed by Department of Social Services with a capacity of 16 or more beds. By July 1, 2012 regional centers may not purchase services from these facilities with two exceptions: the facility is eligible for federal financial participation (FFP) (i.e. has been approved to participate in the Home and Community Based Waiver, another waiver program, is certified to participate in the Medi-Cal program) or has a written agreement and specific plan prior to July 1, 2012 to downsize or restructure the existing facility to be eligible for FFP before June 20, 2013.
- Expand in-home respite worker duties to include the provision of following incidental medical services by trained respite workers: colostomy and ileostomy: changing bags and cleaning stoma; urinary catheter: emptying and changing bags and care of the catheter site; and gastrostomy: feeding, hydration, cleaning stoma, and adding medication per physician's or nurse practitioner's orders for the routine medication of patients with stable conditions. These services may be provided for consumers with stable conditions, and after successful completion of the required training. The consumer's treating physician or surgeon must give assurances to the regional center that the patient's condition is stable.

Some Additional Revenue

- DDS will apply for a Medicaid Section 1915(i) plan amendment which will allow federal Medicaid matching funds for some of the services provided to the approximately 40,000 regional center consumers who qualify for Medicaid but who are not eligible for the Home and Community Based Waiver.

- Increases to parental fee schedule for out of home placement. These changes do not affect the co-pay schedule, whereby some families pay co-pay for some services for children living at home. The new parental fee schedule has been updated to reflect the cost of raising a child in California based upon the USDA's Report, "Expenditures on Children by Families." For children placed out-of-home prior to July 1, 2009, DDS will implement the increase over three years, with one-third of the increase added to the fee on July 1, 2009, one-third on July 1, 2010, and the final third added to the fee on July 1, 2011. For children placed out of home after July 1, 2009, the family will be assessed the new fee at the time of placement. Some parents will no longer be required to pay a fee if their incomes are at or below the Federal Poverty Level, some parents will have their fees reduced, and some parent's fees will be increased. The additional revenue from parental fees will not longer be used for new program development.
- Annual Statement of Services requires regional centers to provide, at least annually, each consumer, his or her parents, legal guardian, conservator, or authorized representative a statement of services and supports the regional center purchased for the purpose of ensuring that they are delivered. The statement must include the type, unit, month, and cost of service and supports purchased.

Some Services Can No Longer Be Purchased

- Regional Centers are prohibited from purchasing experimental treatments, therapeutic services or devices that have not been clinically determined or scientifically proven to be effective or safe or for which risks and complications are unknown. Experimental treatments or therapeutic services include experimental medical or nutritional therapy when the use of the product for that purpose is not a general physician practice.

Some Services Are Temporarily Suspended or Capped

- The TBL temporarily suspends the purchase of the following services: 1) camping and associated travel expenses; 2) social recreation activities, except for those activities vendored as community-based day program (this does not include social skills training); 3) educational services for children ages three to 17; and 4) non-medical

therapies, including, but not limited to, specialized recreation, art, dance, and music pending implementation and certification of the Individual Choice Budget. Because regional centers must give a 30-day notice before terminating these services, suspended services which currently are on a consumer's IPP should continue through August.

The regional center may grant an exemption on an individual basis in extraordinary circumstances to permit the purchase of a suspended service when the regional center determines that: 1) the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability; or 2) the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer's need.

- The TBL temporarily limits the amount of respite a regional center may purchase absent an exception. Specifically, a regional center may not purchase more than 21 days of out-of-home respite services in a fiscal year nor more than 90 hours of in-home respite in a quarter, for a consumer. The regional center may grant an exemption from the respite limits if it is demonstrated that 1) the intensity of the consumer's care and supervision needs are such that additional respite is necessary to maintain the consumer in the family home, or 2) there is an extraordinary event that impacts the family member's ability to meet the care and supervision needs of the consumer.

The amendments also prohibit a regional center from purchasing day care services to replace or supplant respite services. "Day care" is defined as regularly provided care, protection, and supervision of a consumer living in the home of his or her parents, for periods of less than 24 hours per day, while the parents are engaged in employment outside of the home or educational activities leading to employment, or both.

The amendments also provide that a regional center may only consider IHSS a generic resource when the approved IHSS hours meet the respite needs as identified in the IFSP/IPP.

These provisions shall remain in effect until implementation of the

Individual Choice Budget.

Individual Choice Budgets

- DDS, in consultation with stakeholders, is required to develop an alternative service delivery model that provides an Individual Choice Budget for obtaining quality services and supports which provides choice and flexibility within a finite budget that in the aggregate reduces regional center purchase of service expenditures, reduces reliance on the state general fund, and maximizes federal financial participation. The individual budget will be determined using a fair, equitable, transparent standardized process.

Other Service Standards

- Transportation
Regional centers can not fund private specialized transportation services for an adult consumer who can safely access and utilize public transportation when that transportation is available, and will purchase the least costly transportation modality that meets the consumer's needs as set forth in the consumer's IPP.

In addition, a regional center may only fund transportation from the consumer's residence to the lowest cost vendor that provides the service that meets the consumer's need as set forth in the IPP.

Regional Centers may only fund transportation for a minor child living in the family residence if the family provides sufficient written documentation to demonstrate that it is unable to provide transportation for the child.

- Supported Living Services
The planning team of a consumer receiving SLS must confirm that (1) all appropriate and available sources of natural and generic supports have been utilized to the fullest extent possible and specifically are required to provide assistance to a consumer who is a Medi-Cal beneficiary in applying for In-Home Supportive Services within five days of the consumer moving into an SLS arrangement; (2) regional centers utilize the same SLS provider for consumers residing in the same domicile, provided that each consumer's particular needs can

still be met pursuant to his or her IPP; and (3) the consumer, and any roommate, with some exceptions, make all rent, mortgage, or lease payments and be responsible for household expenses.

The TBL allows the regional center executive director, as an exception, to make rent, lease or mortgage payments or assist with household expenses for a consumer in SLS. The regional center cannot pay for more than six months unless the director verifies in writing that making the rent, mortgage, or lease payments or paying for household expenses is required to meet the specific care needs unique to the individual consumer as set forth in an addendum to the consumer's IPP, and is required when a demonstrated medical, behavioral, or psychiatric condition presents a health and safety risk to himself or herself, or another. During the time period that a regional center is making rent, mortgage, or lease payments, or paying for household expenses, the SLS vendor must assist the consumer in accessing all sources of generic and natural supports consistent with the needs of the consumer.

The regional center shall review a finding of necessity on a quarterly basis and the regional center executive director shall annually verify in an addendum to the consumer's IPP that the requirements noted above continue to be met.

A regional center that currently is contributing to rent, mortgage, or lease payments or paying for household expenses shall at the time of development, review, or modification of a consumer's IPP determine if the above criteria including an exception is met. If the planning team determines that these contributions are no longer appropriate, a reasonable time for transition, not to exceed six months, shall be permitted. All paid roommates and live-in support staff are responsible for their share of the rent, mortgage, or lease payments, and household expenses. "Household expenses" are defined as general living expenses and includes, but is not limited to, utilities paid and food consumed within the home.

- Least Costly Services

The IPP/IFSP planning team is required to review the cost of providing services or supports of comparable quality by different providers and to choose the least costly available provider, including

transportation, who is able to accomplish all or part of the consumer's IPP and consistent with the particular needs of the consumer and family as identified in the IPP. In determining the least costly provider, the availability of federal financial participation shall be considered.

The consumer is not required to use the least costly provider if it will result in the consumer moving from an existing provider of services or supports to more restrictive or less integrated services or supports.

- Use of Generic Services (including medical and dental services and In Home Support Services)

Regional centers are prohibited from purchasing any service that would otherwise be available from Medi-Cal, Medicare, the Civilian Health and Medical program for Uniform Services, In-Home Supportive Services (IHSS), California Children's Services, private insurance or a health care service plan if a consumer or a family meets the criteria to receive the service but chooses not to pursue that coverage.

For new IFSPs and IPPs, this provision is effective upon the enactment of TBL, which is July 28, 2009. For existing IFSPs/IPP's requiring modification, this provision will be effective October 1, 2009. Regional centers should immediately begin working with consumers/families impacted on October 1, 2009 by this section to begin the application process with these entities.

- Documentation of Denial by Generic Resource for Medical/Dental Services

Regional Centers are prohibited from purchasing medical or dental services for a consumer three years of age or older unless the regional center is provided with documentation of a Medi-Cal, private insurance or health care service plan's denial and the regional center determines that an appeal by the consumer or family of the denial does not have merit.

The TBL allows regional centers to pay for medical or dental services during certain specific periods: while coverage is being pursued; pending a final administrative decision; or until the commencement of services.

- In Home Supportive Services

Regional Centers are prohibited from purchasing IHSS services for a consumer who meets the criteria to receive, but declines to apply for, IHSS benefits, and from purchasing SLS to supplant IHSS. Between the date a consumer applies for IHSS and the date that a consumer's application for IHSS is approved, the regional center can purchase IHSS services but not at a rate that exceeds the IHSS hourly rate. A regional center executive director may waive the requirement for a consumer to apply for IHSS if the executive director finds that extraordinary circumstances warrant the waiver, and that a finding is documented in an addendum to the consumer's individual program plan.

- Group Behavior Training and Other Behavior Standards

The IPP teams are required to consider the use of group training for parents for behavior intervention techniques, in lieu of some or the entire in-home parent training component of the behavior intervention services.

The TBL specifies the responsibilities of vendors who provide ABA or intensive behavioral intervention services to do the following:

1. Conduct a behavioral assessment of each consumer for whom the vendor provides these services;
2. Design an intervention plan for that consumer; and
3. Provide a copy of the intervention plan to the regional center for review and consideration by the planning team members.

The intervention plan must include certain components, including the service type, number of hours, and parent participation needed to achieve the goals and objectives of the plan.

The TBL states that your regional center may only purchase Behavioral Intervention Services when the parent(s) participate in the intervention plan. Parental participation can vary depending on the parent's or parents' situation. Some examples include:

- Completion of group instruction on the basics of behavior intervention;
- Implementation of intervention strategies, according to the

- intervention plan;
- Data collection;
- Participation in any needed clinical meetings; or
- Purchase of suggested behavior modification materials or community involvement if a reward system is used.

Regional centers are not allowed to reimburse parents for participating in any behavioral services treatment program.

Regional Centers may not purchase Behavioral Intervention Services for purposes of providing respite and other types of services. A family may need increased respite if a consumer has challenging or complex behaviors. However, respite is not the same as behavioral intervention and respite providers do not have the skills or training to implement Behavioral Intervention Services. However, there are times when a family may need specialized behavioral respite to help them put the intervention plan into practice at home. The decision as to whether a behavioral respite aide is needed should be made based on the consumer's individual needs and was not changed by the TBL.

Finally, regional center must discontinue Behavioral Intervention Services when the treatment goals and objectives in the consumer's intervention plan are achieved. Regional Centers must evaluate intervention plans every six months to make sure that the treatment goals and objectives are updated to reflect the consumer's current circumstances and needs. Regional Centers can only discontinue Behavioral Intervention Services if those updated treatment goals and objectives do not require continued Behavioral Intervention Services.

The new laws are very specific about how Behavioral Intervention Services are defined, including requirements that such services reflect "evidence-based practices."

- Uniform Holiday

The TBL requires the implementation of a 14-day uniform holiday schedule for work activity programs, activity centers, adult development centers, behavior management programs, social recreation programs, adaptive skills trainers, infant development programs, program support groups (day service), socialization training programs, client/parent support behavior intervention training

programs, community integration training programs, community activities support services, or creative arts programs, including transportation services.

The statute currently requires closure the days between Christmas and New Year. However, DDS may adjust the holiday schedule with sufficient notice through a program directive. We believe DDS is working with vendors to identify the preferred schedule.

- Alternative Program For Seniors

The TBL requires vendors of behavior management, activity center, and adult development center day programs, social recreation programs, socialization training programs, community integration training programs, community activities support programs, creative art programs, and work activity programs to offer an alternative senior (over 50 years of age) program component at a ratio of no more than one staff to 8 consumers. The rate is not to exceed the lesser of thirty-five dollars (\$35) per day or the vendor's existing daily rate.

Changes to Early Start for Infants and Toddlers

- Eligibility Criteria

Currently, eligibility due to a developmental delay requires a "significant difference" between the expected level of development for an individual's age and the current level of functioning. That significant difference was measured as a 33% delay in one of five developmental areas. Prospectively, eligibility due to a developmental delay will be a 33 percent delay in one of the five developmental areas before 24 months of age, or, at 24 months of age or older, either a delay of 50 percent in one of the five developmental areas or a 33 percent delay in two or more developmental areas.

DDS has indicated currently eligible infants/toddlers with a developmental delay remain eligible for Early Start services. For new referrals, the age for use in the determination of eligibility due to a developmental delay for Early Start shall be the age of the infant or toddler on the date of the initial referral to the Early Start program.

Effective October 1, 2009, the TBL also alters the Early Start program

eligibility requirements such that infants and toddlers who are at high risk of having a substantial disability due to a combination of biomedical risk factors do not qualify for Early Start program services. For infants/toddlers who are currently receiving services due to being "at risk", regional centers must provide 30-day notice that their services will end on September 30, 2009. At risk individuals may be eligible for a Prevention Program. At risk individuals may also ask to be evaluated as to whether they are eligible under the developmental delay category. This change requires an Early Start State Plan amendment. If the amendment is not approved, or approval is delayed the changes will not be effective October 1.

- Required Services

The TBL also specifies that effective October 1, 2009, regional centers are only responsible for the provision of appropriate and federally required early intervention services and durable medical equipment. Required services are those early intervention services that are designed to meet the unique developmental needs of the child and the needs of the family related to enhancing the child's development. Non required services include: Child care, diapers, dentistry, interpreter, translator, genetic counseling, music therapy, social recreation programs, housing, medical service unrelated to the child's development, hospitalization, immunizations, well-baby care, family or marital counseling unrelated to the infant's development and substance abuse counseling.

- Prevention

The TBL requires DDS to establish a prevention program for at-risk babies. "At-risk baby," means a child under 36 months of age who is otherwise not eligible for Early Start and whose genetic, medical, developmental, or environmental history is predictive of a substantially greater risk for developmental disability than that for the general population. The program is to provide intake, assessment, case management, and referral to generic agencies. DDS will allocate specific funding for the program to each regional center. DDS will establish policies and procedures for implementation of the program. Disability Rights California staff is participating on a workgroup to develop this program.

- Use of Private Insurance

At the time of development, review or revision of the IFSP, the regional center is required to have families use their private insurance or health care service plan for medical services identified in the IFSP, other than for evaluation and assessment, in compliance with applicable federal and state law and regulation. Regional centers must continue to ensure the timely provision of required early intervention services. This provision is in addition to the general use of generic resources, use of generic medical and dental services. As noted above, IFSP teams are also to look at neighborhood preschools and use of group training in lieu of some or all of the in-home behavioral training.

System Related Changes

- Quality Assurance

The TBL discontinues the current "Mover's Study" effective July 1, 2009, and Life Quality Assessments effective January 1, 2010 and requires DDS to implement an improved unified quality assessment system by January 1, 2010.

The TBL also requires DDS to implement an improved unified quality assessment system. This will replace the life quality assessments currently performed by Area Boards. DDS, in consultation with stakeholders, is to identify a valid and reliable quality assurance instrument that includes assessments of consumer and family satisfaction, provision of services, and personal outcomes. The instrument must meet specified criteria, and DDS must contract with the state council to collect data for the quality assurance instrument. The state council must notify the regional center if the information collected reveals any suspected violation of the legal, civil, or service rights of a consumer, or if it determines that the health and welfare of a consumer is at risk. DDS must, in consultation with stakeholders, annually review the data collected from and the findings of the quality assurance instrument described above and accept recommendations regarding additional or different criteria for the quality assurance instrument in order to assess the performance of the state's developmental services system and improve services for consumers.

- Triennial Reviews

Welfare & Institutions Code section 4648.1 was amended to repeal the requirement that regional centers perform triennial evaluations of community care facilities, as described in Sections 56046, 56049, 56050, 56051 and 56052 of Title 17 of the California Code of regulations.

- Monitoring

The TBL also requires DDS to report to the Legislature during budget hearings for FY 2010-11 regarding the effect on the developmental service system of the specific cost containment measures passed in 2009. DDS will be monitoring compliance with and implementation of these new provisions of law through data analysis and other mechanisms. For instance, DDS will monitor expenditures under service codes (and account codes) used for the purchase of non-medical therapies, camp, educational services and social recreation activities (e.g. service codes 693, 694, 106, 850, 680, 678, 015, 676, 678,107, 106, 072, 084). Likewise, in regional center's efforts to implement and comply with the trailer bill language, application of the law can not be looked at solely through the use of service codes but must also take into consideration the purpose of the service being purchased by the regional center as reflected on the IPP/IFSP.